FOR ARGUMENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NOS. 77-1652 and 77-1654

FEDERAL ENERGY REGULATORY COMMISSION,
Petitioner,

v.

SHELL OIL COMPANY, ET AL.,
Respondents.

CONSUMER ENERGY COUNCIL OF AMERICA,
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

BRIEF OF RESPONDENT PRODUCERS

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BRIEF OF RESPONDENT PRODUCERS

I. INTRODUCTION

Shell Oil Company, *et al.*[1] (herein called "Producers") who were petitioners or intervenors in the case below, submit this Brief in opposition to the positions taken by the Federal Energy Regulatory Commission[2] (successor

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1. A full list of the Producers joining herein is contained on the inside cover of this Brief.

2. Supported by Associated Gas Distributors ("AGD") *amicus curiae*.

to the Federal Power Commission, both of which are referred to herein as "Commission"), and Consumer Energy Council of America[3] (successor to Consumer Federation of America, herein called "CEC").

II. COUNTERSTATEMENT[4]

In this proceeding, the Commission and CEC are attempting to obtain this Court's approval for a massive expansion of Commission jurisdiction. The Commission and CEC seek to obliterate the distinction between the Commission's jurisdiction over "sales in interstate commerce for resale" of natural gas and its lack of jurisdiction over "production activities" which this Court so carefully crafted in a long series of cases commencing with *Colorado Interstate Gas Co. v. F.P.C.*, 325 U.S. 581 (1945), and extending through *F.P.C. v. Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1949); *Interstate Natural Gas Co. v. F.P.C.*, 331 U.S. 682 (1947); *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954), to *United Gas Improvement Co. v. Continental Oil Co.*, 381 U.S. 392 (1965). Despite the clear language of this Court, which we will discuss in the Argument section, *infra*, that Section 1(b) of the Natural Gas Act ("Act") was to be afforded its clear meaning, Petitioners seek to read the exclusion of jurisdiction over "production and gathering" as being without substance.

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3. Supported by American Public Gas Association ("APGA") and Action Alliance of Senior Citizens of Greater Philadelphia ("Senior Citizens") *amicus curiae*.

4. At pages 3-10 of its Brief, CEC gives an inaccurate and incomplete explanation of the reasons for the natural gas shortage. The Counterstatement herein gives the full history of the development of the shortage and its causes.

Although the Commission now regards the question as a pure legal issue, having finally abandoned the rationale which led to the institution of this proceeding in the first place, CEC and its supporting *amici* continue to assert that this expansion of Commission jurisdiction is necessary to prevent the producers from refusing to deliver the reserves which they have discovered (CEC Br. pp. 19-21) (APGA Br. p. 6).

CEC's (as well as APGA's and Senior Citizens') position rests on a simplistic and fundamental misunderstanding of the engineering principles underlying gas production, the economic causes of the gas shortage, and the contractual and legal structure under which the industry operates. By blandly assuming "facts" which do not exist, these parties create a grossly false picture of the role of producers and pipelines in finding, producing, and transporting gas to the consumer.

The basic assumption which underlies the entire argument of CEC dealing with the so-called "service obligation" of the producer, is the implication that a gas reservoir will continue to produce forever, either at a "stable" rate (p. 34) or at least at a predictable rate of decline (p. 45). Unfortunately, gas reservoirs are not the simple, predictable creatures that CEC would like them to be. Gas reservoirs contain only a finite quantity of gas, and the amount of gas remaining in the reservoir, and the ability of the reservoir to deliver the gas, begins to decline with the first day of production. The rate of decline is dependent on the interaction of gas and water pressures in microscopic spaces in the porous rock of the producing formation, thousands of feet beneath the surface. The only information which the producer, or

anyone, can have of these forces is gained by observing the results of their actions through a few well bores, some 6 to 10 inches in diameter, spaced as much as a mile apart. It is therefore not surprising that reserves estimates are imprecise, and deliverability projections often very wrong, because of some action occurring within the reservoir which is unknown or unexplainable. Reductions in the ability of gas to move through the reservoir rock to the well bore may be alleviated by drilling additional wells, or reworking existing wells, or by installing compression; but production from the reservoir may continue to decline despite any or all of these actions. In most cases the question whether additional capital expenditures by a producer in a producing reservoir will result in additional reserves, or enhanced delivery from existing reserves, cannot be accurately answered without making the capital expenditure. If the well is drilled and no additional gas results, the producer has lost his capital with no resulting benefit.

In Appendix A to this Brief,[5] we have attached a diagram showing the depletion curve of a typical gas field. In the early years of the field, the fact that the deliverability of the field is constantly declining is obscured by another factor. When a pipeline constructs facilities to connect a specific field to its pipeline system, it does not size the facilities to receive the maximum amount the field can produce in its most prolific period (150 MMcf per day in our diagram). This would be an imprudent investment, as the pipeline knows that the field cannot continue to produce at that rate for very

5. A similar diagram was utilized by Producers' counsel in oral argument to the Commission, and is discussed at Appendix pages 396-98.

long. Therefore, the pipeline is constructed to take a maximum which is less than the initial productive capacity of the field (100 MMcf per day in the diagram), and takes that quantity all through the "flush" production days of the field (years 1 through 6 in our diagram). There comes a point in time in every field when the reservoir will no longer produce as much gas as the pipeline is capable of taking. From this time on, the production from the field (or to use CEC's terms, the service the field is capable of rendering) is based, not on the capacity of the pipeline, but on the ability of the reservoir to produce.

The supply shortage, lamented by CEC and its *amici* allies,[6] is a result of depletion of gas reservoirs discovered many years ago, on a national scale. Until the early 1960s, the depletion of older, previously discovered gas fields was offset by the continuing discovery of new fields. Following *Atlantic Refining Company v. Public Service Commission of New York (CATCO)*, 360 U.S. 378 (1959), the Commission began a series of proceedings designed to "hold the line" on prices received by producers until the Commission had established just and reasonable rates, see *United Gas Improvement Co. v. Callery Properties, Inc.*, 382 U.S. 223 (1965) and *F.P.C. v. Sunray DX Oil Co.*, 391 U.S. 9 (1968). Although proceedings began in 1961 and 1963, just and

6. The concern of APGA over supply is particularly ironic. In all of the area rate proceedings before the Commission in the 1960s and early 1970s, this same group took the position that the Commission need not consider supply at all in establishing ceiling prices, and that the producers' claims of an impending supply shortage if prices were not increased was a "hoax"! See *Placid Oil Co. v. F.P.C.*, 483 F.2d 880, 894, n. 13 (1973), *affirmed Mobil Oil Corp. v. F.P.C.*, 417 U.S. 283 (1974).

reasonable rates were not established in the largest producing areas, the Texas Gulf Coast and Southern Louisiana Areas, until 1971. The Commission had been so successful in "holding the line" on prices that the just and reasonable rates established by those decisions, utilizing outdated cost averages as a basis, barely exceeded the contract prices prevailing some ten years earlier.[7]

Throughout the decade of the 1960s, while the price for the product which they sold remained frozen, the producers faced steadily rising costs, occasioned by two factors: (i) the general inflationary trend of the economy, which raised the cost of labor and material for gas producers as well as everyone else; and (ii) a special inflationary factor applicable to the oil and gas production business. This factor has been described by economists as the "declining resource base". It can be explained in the following manner: The total number of gas fields in the United States is a finite number. Whatever that number is, it will not increase within any time span material to anyone living today. With each gas field which is found, one less remains to be found in the future. Obviously, the shallowest, cheapest, easier-to-find fields are found first. This leaves the fields remaining to be found progressively to be those which are the deeper, more costly, and less accessible.

Responding to these real economics (and not to the artificial calculations of return on historic costs made

7. In the sales involved in the *CATCO case*, *Atlantic Refining Co. v. Public Service Commission of New York*, 360 U.S. 378 (1959), the contracts provided for an initial price of 22.4 cents per Mcf, 360 U.S. 378, 383. In March 1972, thirteen years later the average price paid domestic producers by interstate pipelines' averages 20.29 cents per Mcf, see Press Release No. 19278, issued by the Commission on June 1, 1973.

by witnesses in Commission proceedings), the exploration for gas in the United States declined. As a result, the new gas reserves discovered amounted to approximately half of the gas being produced and consumed for a nine-year period.[8]

Again in response to immutable laws of supply and demand, as the older reservoirs continue to decline in their ability to deliver gas and new reservoirs were not being discovered rapidly enough to replace them, shortages began to occur. The unregulated intrastate market, which has previously been able to obtain all the supplies it needed by merely matching the price fixed by the Commission for the interstate market, began to react, as all free markets do, by increasing the prices it paid for the commodity it needed. This increase in prices in turn led to a rejuvenation of gas exploration, but specifically directed toward the free intrastate market, and away from the controlled interstate market. Recognizing this trend, the Commission acted in the National

8. See table taken from Staff Report No. 2 setting out production and reserve figures and R/P ratios 1966-1975, cited by the Fifth Circuit in *Placid Oil Co. v. F.P.C.*, 483 F.2d 880, 895 (1973), reproduced as Appendix B.

More recent figures appear in Appendices C and D, also attached. Appendix C is Chart 1, reproduced from page 111 of the Annual Report of the American Gas Association, Vol. 32, June 1978, entitled "Reserves of Crude Oil, Natural Gas Liquids, and Natural Gas in the United States and Canada as of December 31, 1977" shows the trend of reserves additions and production, with the resultant impact on proved reserves (the anomaly in 1970 was the addition of Alaskan Prudhoe Bay reserves). Appendix D, attached hereto, is Table 5 from a Report by the Commission's Bureau of Natural Gas issued January 1977, page 17 showing the decline in reserves dedicated to interstate commerce as of December 31, 1963 compared with new supply added, with a resultant decline in year end reserves of interstate pipeline companies from 188 trillion cubic feet to 106 trillion cubic feet.

Rate Cases[9] to increase interstate prices, but always "too little and too late" to allow exploration to find new reservoirs rapidly enough to offset those older reservoirs which were steadily declining (A. 451).

CEC and APGA seized on the typical provision of producer contracts which required the producer to sell and deliver, and the pipeline purchaser to take or pay for, as minimum daily contract quantity of gas ("DCQ").[10] The purpose of this provision was to require the *pipeline* to take at least this amount of gas each day, or pay the producer for it if not taken. Throughout much of the 1960s, many pipelines were in so-called "take-or-pay" positions, to the point that consumer advocates demanded that that issue of a pipeline's need for the gas be resolved before a certificate was issued to a producer. The Commission instead chose to deal with this issue in *pipeline* certificate proceedings, and was upheld in so doing by this Court, see *F.P.C. v. Sunray DX Oil Company*, 391 U.S. 9, 47 (1968). This provision was important only during conditions of oversupply, either on a national or a field basis (see years 1 through 6, diagram on Appendix A). All of these contracts contained other provisions, which provided, although the wording varied somewhat,

9. *National Rate Case For New Gas*, Docket No. R-389B, Opinion No. 699, 51 F.P.C. 2212; Opinion No. 699-H, 52 F.P.C. 1604; *affirmed Shell Oil Company v. F.P.C.*, 520 F.2d 1061, *rehearing denied*, 525 F.2d 1261 (5th Cir. 1975), *cert. denied sub nom. California Co. v. F.P.C.*, 426 U.S. 941 (1976); *National Rate Case For Flowing Gas*, Opinion No. 749, ____F.P.C.____, *affirmed Tenneco Oil Co. v. F.E.R.C.*, 571 F.2d 834 (5th Cir. 1978); *Second National Rate Case For New Gas, American Public Gas Association v. F.P.C.*, 567 F.2d 1016 (D.C. Cir. 1977), *cert. denied*, ____U.S. ____, 55 L.Ed.2d 499 (1978)

10. Typical contract provisions appear in the record at Appendix 36-39, 83-89, 101.

that the DCQ would be reduced when the fields committed to the contract were no longer capable of producing the quantities set out in the contract. The contracts further preserved, in one form or another, the right of the producer to decide how the field would be developed and produced, so that the pipeline could not "second guess" the management decisions involved. Typical contract provisions were introduced into the record below.[11]

This was the situation in the fall of 1975, when the Commission was hailed before the Subcommittee of Oversight and Investigation of the House Interstate Commerce Committee to answer charges by consumer advocates that it was not requiring producers to live up to their contract and certificate obligations.[12] The Commission responded with Order No. 539 issued on October 14, 1975, without notice, hearing or opportunity to comment, which announced the Commission's intention to enforce all "delivery and supply obligations" purportedly contained in producer contracts and producer and pipeline certificates (A. 2-14). Producers filed an Application for Rehearing (A. 16-26) which stated that the Producers *were* complying with all of their contract and certificate obligations.[13] This pleading further pointed out that the rate of decline in deliveries was determined by the reservoir mechanics of the field, not the parties to the contract, and the contracts typically reflected this basic fact, providing that the seller would never be required to deliver more than his wells would produce or amounts

11. Appendix 37, 78, 88-89, 102.

12. See decision of the Court of Appeals, A. 3a, n. 1.

13. The Commission now appears to agree with the statement of the producer's obligations under a typical gas sales contract, see Brief, pp. 5, 6, n. 2.

in excess of that permitted by the appropriate State regulatory body (A. 37, 78, 88-89, 102).[14]

This pleading was followed by a Petition for Rehearing by Tenneco Oil Company, *et al.* (A. 144-156), and by a Motion for Oral Argument by Shell Oil Company, *et al.*, (A. 160-198), which pointed out in detail that reservoirs and delivery conditions varied widely, and that neither the parties to a gas sales contract nor the Commission in issuing the certificate could make the reservoir continue to produce when all the gas was gone, or in many cases, even materially affect the natural rate of decline caused by depletion of the reserves. Following Order No. 539, the Commission began to attach conditions to producer certificates requiring the producer to comply with the "delivery obligations" (A. 229) of his contract or certificate, without any indication of what the Commission believed those obligations to be (A. 204-235). By Order issued February 12, 1976 (A. 236-256), the Commission set a number of these certificate applications down for hearing, requiring the producers to submit reserve and deliverability estimates on the reserves being committed.[15] On March 26, 1976 (A. 263-281), the Commission issued Order No. 539-A which added to the confusion. On the one hand, the Commis-

14. CEC appears to question the intent of the typical gas contract (p. 14) on the basis of whether those contracts in the record contain a "sole discretion" clause. What CEC does not understand is that this contract provision took many forms, including a reduction in the DCQ, whenever the seller failed to deliver that quantity, see *e.g.*, A. 102.

15. Commissioner Watt filed concurring opinions objecting to the Order 539 requirements (A. 234, 257). This hearing was later cancelled in favor of the rule-making proceeding instituted by Order No. 539-A (A. 263-81).

sion assured the producers that "it did not intend to imply that a take-or-pay provision in a contract necessarily constituted the delivery obligation" (A. 269), and that "Order 539 does not impose a specific warranty obligation if none is provided for in the contract.[16] (A. 270). On the other hand, the Commission reaffirmed its intention to insert a new condition in all future producer certificates providing for the determination of a "certificated minimum daily delivery obligation of the seller" calculated on the basis of the producer's contract "unless changed by the certificate authorization" (A. 278). The Commission propounded a series of questions (A. 276) and requested submission of Comments and oral argument.

After receiving Comments and hearing oral argument, in which the Commission was repeatedly told by pipelines (A. 304-317) as well as producers that it was failing to recognize that estimating reserves before they are produced is an art, not a science, that gas is a wasting asset, that production levels continuously decline, and that neither the contract nor the certificate provide any guarantees as to the total amount of reserves or the

16. *Gulf Oil Corporation v. F.P.C.*, 563 F.2d 588 (3rd Cir. 1977) cited by CEC (p. 10) as the "only . . . meaningful enforcement action to counter flagging deliveries" is clearly distinguishable on the facts from the case at bar. Gulf had agreed to supply a certain daily quantity of gas, regardless of source, for a certain time period, and had been so certificated by the Commission. In oral argument to the Commission below, counsel for Texas Eastern Gas Pipeline Company, the purchaser in the Gulf contract stated: "You can count these warranty contracts on the fingers of your left hand." (A. 460) The distinction between a "warranty contract" and a conventional contract was discussed in *Shell Oil Company v. F.P.C.*, 531 F.2d 1324, 1327, n. 6 (5th Cir. 1976).

rate of delivery (A. 307-308),[17] the Commission issued Order No. 539-B on July 30, 1976. In that Order the Commission withdrew the certificate conditions imposed in Order Nos. 539 and 539-A relating to a "certificated minimum daily delivery obligation" and imposed instead the "standard of the prudent operator to develop and maintain deliverability from reserves dedicated hereunder" (Comm. Br. p. 3) on all certificates issued after October 14, 1975. The Commission further found that this obligation was "implicit" in all prior certificates which it had issued, even though these certificates contained no language, or any hint that the Commission might later assert jurisdiction in this area.

The "prudent operator" standard imposed by the Commission in Order No. 539-B was the same standard described in State oil and gas law[18] as controlling actions between the lessor and lessee. (Br. p. 32). Under that standard, the lessee is required to conduct only those operations which an ordinary prudent operator would carry out "having due regard for the rights of both the lessor and lessee"[19] and was not required to perform

17. Mr. McGrath, General Counsel for the Interstate Natural Gas Association of America (consisting of all the major pipelines in the United States) stated on oral argument: "Nowhere does the Commission certificate or is there any basis for it to certificate a minimum daily deliver obligation. It cannot be done, we submit, because of the varied nature of the resources with which we are dealing, *i.e.*, natural gas. Every day a well is produced that gas is gone, the reservoir is depleted to that extent." (A. 446) . . . "You are trying to impute a delivery obligation which is just not there." (A. 447)

18. 5 H. Williams and C. Meyers, *Oil and Gas Law*, §§ 804, 806-808; 2 Summers, *Law of Oil and Gas*, 559-644; Merrill, *Covenants Implied in Oil and Gas Leases*, §§ 7, 220.

19. 5 H. Williams and C. Meyers, *Oil and Gas Law* § 806.3.

any operations which could not reasonably be expected to return his costs and a reasonable profit.[20] If the lessee had violated this standard, the penalty was usually forfeiture of the lease.[21]

The Commission receded from its position that producers were violating their contracts, and concluded that there was no evidence of withholding gas from the market. Nevertheless, the Commission asserted the right to regulate production operations of a gas producer selling in interstate commerce, under its authority to prevent the abandonment of service under Section 7 of the Act.

The Court of Appeals rejected the Commission's position, carefully reviewing this Court's decisions on the scope of the "production and gathering" exclusion. The Court of Appeals found that in administering the proposed certificate condition, the Commission intended to dictate to the producer whether new wells should be drilled, and that this clearly involved the Commission in the production activity, even though done in the guise of "maintaining service". The Court of Appeals held that the asserted jurisdiction of the Commission would "all but eliminate the 'production and gathering' exclusion and allow the FERC to encroach on areas reserved to the states" (A. 9a). Order No. 539-B was vacated and remanded as exceeding the Commission's jurisdiction under the Natural Gas Act.

20. Id.

21. Id., § 808.

III. SUMMARY OF ARGUMENT

The extension of the Commission's jurisdiction over production operations, including the asserted power to require drilling of new wells and other capital expenditures by producers, violates Section 1(b) of the Natural Gas Act, which excludes "production and gathering" from the jurisdictional reach of the Commission. The dividing line between "production and gathering" (non-jurisdictional) and "sales for resale" (jurisdictional) which was carefully drawn in *Phillips* and the other decisions of this Court cited in the Argument section, *infra,* has never before been breached. Although this Court's decisions in *Sunray Mid-Continent Oil Co. v. F.P.C.,*[22] and *California v. Southland Royalty Co.,*[23] preclude abandonment of certificated service due to a change in the contractual position of the producer, assuming that gas is available for sale from committed reserves, they do not authorize the Commission to inject itself into the production function and direct the producer as to how, when and where his capital is to be invested to produce the gas reservoir most efficiently. Such jurisdiction would place the Commission squarely in conflict with the jurisdiction of the State Conservation Agencies approved by this Court in *Champlin Refining Co. v. Corporation Commission.*[24] We do not argue that Congress could not preempt State jurisdiction — but in passing the

22. 364 U.S. 137 (1960).

23. ____U.S.____, 98 S.Ct. 1955, 56 L.Ed.2d 505 (1978).

24. 286 U.S. 210 (1931).

Natural Gas Act this Court has repeatedly held this was not its intention, see *e.g., F.P.C. v. Panhandle Eastern Pipe Line Company.*[25]

The Court is confronted in this case with no regulatory gap. The decision of the Court of Appeals creates no hiatus between those areas controlled by the Commission and those areas which the States have the power to control. Rather, the Commission claims that despite the *absence* of a regulatory hiatus caused by constitutional prescriptions against exercise of state power, the Commission nevertheless needs the power to control production to effectuate its statutory responsibilities under the Natural Gas Act. In essence, the Commission's argument is not that there is a regulatory gap between past exercise of power by the Commission and that exercised by the States, but rather that the bifurcated system designed by Congress is not adequate to allow the Commission to fulfill its perceived mandate (Br. p. 23). However, the bifurcated structure is the system designed and intended by Congress. Thus, perceived shortcomings in that system are a legislative matter which can only be remedied by Congress.

The reason behind the assertion of the Commission's jurisdiction is now conceded by the Commission (but not CEC) to be non-existent. Far from generating additional gas supplies as CEC and APGA imply, the expansion of Commission jurisdiction will lead to hundreds, if not thousands, of proceedings as the Commission delves into the difficult questions of why pro-

25. 337 U.S. 498 (1949); see also cases cited in Argument section, *infra.*

duction has declined from a reservoir and what, if anything, can be done to increase it. The uncertainty created by this additional regulation will undoubtedly reduce exploration for gas generally, with a consequent *adverse* impact on gas supply.

IV. ARGUMENT

A. Prior Cases Of This Court Establish A Clear Distinction Between "Production Activities" And "Sales For Resale".

The Commission and CEC attempt to read this Court's decisions in *Phillips, supra,* and *United Gas Improvement Co. v. Continental Oil Co., supra,* as effectively eliminating the "production and gathering" exclusion contained in Section 1(b) of the Natural Gas Act.[26] This construction does violence to both the spirit and the language of those decisions, and places them in conflict with a number of earlier (and later) decisions of this Court. What this Court actually said in *Phillips* was this:

> " . . . Phillips['] . . . sales in interstate commerce of natural gas for resale are subject to the jurisdiction of and regulation by the Federal Power Commission." (347 U.S. at 677)
>
> * * *
>
> "We are of the opinion . . . that production and gathering, in the sense that those terms are used in § 1(b), end before the sales by Phillips occur.

26. See Court of Appeals' Opinion below, Appendix B, p. 9a.

> "In Federal Power Com. v. Panhandle Eastern Pipe Line Co., 337 U.S. 498, 505, 93 L.Ed. 1499, 1505, 69 S. Ct. 1251, we observed that the 'natural and clear meaning' of the phrase 'production or gathering of natural gas' is that it encompasses 'the producing properties and gathering facilities of a natural-gas company.' Similarly, in Colorado Interstate Gas Co . v. Federal Power Com. 324 U.S. 581, 598, 89 L.Ed. 1206, 1220, 65 S. Ct. 829, we stated that '[t]ransportation and sale do not include production or gathering,' and indicated that the "production or gathering" exemption applies to the physical activities, facilities, and properties used in the production and gathering of natural gas. *Id.*, 324 U.S. at 602, 603. See also Federal Power Com. v. Hope Natural Gas Co., 320 U.S. 591, 612-615, 88 L.Ed. 333, 350-352, 64 S.Ct. 281; Peoples Natural Gas Co. v. Federal Power Com., 75 App. D.C. 235, 127 F.2d 153; cf. United States v. Public Utilities Com., 345 U.S. 295, 307-311, 97 L.Ed. 1020, 1033-1035, 73 S.Ct. 706." (347 U.S. at 678)

In *Phillips,* the producer made the argument that the sale of the natural gas was "incidental" to production, and therefore excluded from Commission jurisdiction, and the Commission so found (10 F.P.C. 246, 278; 347 U.S. 672, 677). This Court disagreed finding that "production and gathering, in the sense that those terms are used in § 1(b), end before the sales by Phillips occur", 347 U.S. 672, 678. In the case at bar, the Commission and CEC arguments are a mirror image of those made by the producer in *Phillips.* The Commission's premise is that "production" is incidental to the "sale", and therefore jurisdictional. The same reasoning which led this Court to reject the implication that the sale is incidental to the production, leads to rejection of this thesis that

production is incidental to the sale and therefore jurisdictional. As we read *Phillips*, the Court was saying that "production and gathering" and "sale for resale" are two distinct functions, although both may be performed by the same person. The "production and gathering" function is subject to State regulation; the "sale for resale" function is subject to Commission jurisdiction.[27]

Nor did this Court's decision in *United Gas Improvement Co. v. Continental Oil Co.* (Rayne Field), *supra* alter the clear distinction set out in *Phillips* between the Commission's jurisdiction over "sales for resale" (even though in that case the sale occurred *before*, instead of *after* production) and its lack of jurisdiction over the "physical activities, facilities, and properties used in the production and gathering of natural gas" *Phillips*, 347 U.S. at 678. This Court in *Rayne Field* said:

> "We conclude that even though a sale of natural gas in interstate commerce occurs before production or gathering is ended, it is nonetheless subject to regulation. In the context of such a sale, as distinguished from the situation in FPC v. Panhandle Eastern Pipe Line Co., 337 U.S. 498, 93 L.ed. 1499, 69 S.Ct. 1251, to be discussed hereafter, the 'production or gathering' exemption relates to the physical activities, processes and facilities of production or gathering, but not to sales of the kind affirmatively subjected to Commission jurisdiction. This accommodation of the two relevant clauses of § 1(b) gives content to the national objectives of the Natural Gas Act as expounded in Phillips, and to the Commission's jurisdiction to accomplish them,

27. CEC's word game, which "focuses on the services rendered" (Br. pp. 25, 26) does not change the basic structure of either the industry or the law.

> while in no way interfering with state regulatory power over the physical processes of production or gathering in furtherance of conservation or other legitimate state concerns." (381 U.S. 392, 403-404)

In the light of this Court's clear language on the distinction between the "physical processes of production and gathering" on the one hand, and the "sales for resale" on the other, the general language quoted by the Commission (pp. 24, 27) is not controlling.

To construe *Phillips* and *Rayne Field* as abolishing the "production and gathering" exclusion of Section 1(b) would place these decisions in square conflict with other decisions of this Court. In *Panhandle Eastern Pipe Line Company v. Public Service Commission*, 332 U.S. 507 (1947), this Court stated:

> "Three things and three only Congress drew within its own regulatory power, delegated by the Act to its agent, the Federal Power Commission. These were: (1) the transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale." (332 U.S. 507, 516)

Far from being overruled by *Phillips*, this language was reiterated by the Court in *F.P.C. v. Louisiana Power & Light Company*, 406 U.S. 621, 636 (1972).

The Natural Gas Act did not envisage federal regulation of the entire natural gas field to the limit of constitutional power, *F.P.C. v. Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 502 (1949), but was intended to encompass only that area which the States were precluded from regulating, *Interstate Natural Gas Company v.*

F.P.C., 331 U.S. 682, 689-93 (1947); *Public Utilities Commission v. Attleboro Steam & Electric Company*, 273 U.S. 83 (1927). In the *Interstate* case, this Court said:

> "Clearly, among the powers thus reserved to the States is the power to regulate the physical production and gathering of natural gas in the interests of conservation or of any other consideration of legitimate local concern. It was the intention of Congress to give the States full freedom in these matters." (331 U.S. 682, 690)

In *Colorado Interstate Gas Co. v. F.P.C.*, 324 U.S. 581 (1945), after finding that the Commission could include production properties in the rate base of an interstate pipeline company, this Court stated the following:

> "That does not mean that the part of § 1(b) which provides that the Act shall not apply to 'to the production or gathering of natural gas' is given no meaning. Certainly that provision precludes the Commission from any control over the activity of producing or gathering natural gas. For example, it makes plain that the Commission has no control over the drilling and spacing of wells and the like." (324 U.S. 581, at 602-03)

The previous year in *F.P.C. v. Hope Natural Gas Co.*, 320 U.S. 591 (1944), this Court also noted:

> ". . . the Act does not intrude on the domain traditionally reserved for control by state commissions; and the Federal Power Commission was given no authority over 'the production or gathering of natural gas.' § 1(b). In addition, Congress recognized the legitimate interests of the States in the conservation of natural gas." (320 U.S. 591, at 612-13)

What does "production and gathering" consist of? In *Northern Natural Gas Co. v. State Corporation Commission*, 372 U.S. 84 (1963), this Court defined them as "the physical acts of drawing the gas from earth and preparing it for the first stages of distribution" 372 U.S. 84, 89.[28]

The "physical act of drawing the gas from the earth" is the very thing which was being regulated by the States at the time the Natural Gas Act was passed, *Champlin Refining Co. v. Corporation Commission, supra*, and was therefore excluded from Commission jurisdiction under the *Panhandle* line of cases, above cited.

CEC proposes to avoid this long line of decisions of this Court by the simple expedient of talking about "service" instead of "production" (p. 25, 26). As AGD recognizes, "the quantity of gas sold is necessarily determined by the quantity of gas produced" (Br. p. 5). Thus, the focus must remain on whether the Commission has jurisdiction over production.

This Court's decisions in *Sunray Mid-Continent Oil Company v. F.P.C., supra* and *California v. Southland Royalty Company, supra* do not require a contrary result.

In *Sunray*, this Court sustained the Commission's power to issue a certificate of public convenience and

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28. See also *Phillips, supra*, 347 U.S. 672, 680, 681; *Continental Oil Co. v. F.P.C.*, 266 F.2d 208 (5th Cir. 1959); *J.M. Huber Corp. v. F.P.C.*, 236 F.2d 550 (3rd Cir. 1956); *F.P.C. v. Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 518 (1949); *Continental Casualty Co. v. Associated Pipe & Supply Co.*, 447 F.2d 1041 (5th Cir. 1971).

necessity extending beyond the term of the producer's contract, and to prevent the producer from abandoning the "service" when his contract expired. But the Court did not grant the Commission jurisdiction to require producers to "drill additional wells and take affirmative measures to maintain pressure in the reservoir" as the Commission now claims the authority to do (Br. p. 33). The Court held only that, having dedicated the production from the fields included under his contract to interstate commerce and having received a certificate for such a sale, the producer could not cease the sale and sell the gas instead on the intrastate market. It is quite a different thing to say "if the field produces gas you must sell it to this buyer" as opposed to "you must make this field continue to produce until the Commission lets you stop, regardless of what it costs you".

In fact, this Court in *Sunray* specifically refused to consider whether the Commission's order requiring the producer to continue deliveries "offended" the "production and gathering" exclusion of the Act, as this issue was not raised before the Commission. The Court said "we intimate no view as to its merits", 364 U.S. 137, 157.

Likewise *California v. Southland Royalty Company, supra* is distinguishable on the facts from the case at bar. In *Southland*, the Court held that the obligation not to abandon service was not limited by private contracts, whether between the producer and the pipeline as in *Sunray*, or between the producer and his lessor in *Southland*, 56 L.Ed.2d 505, 511. In the present case, the limitation on service is imposed, not by private contract, but by the natural reservoir forces. The Commission cannot require a depleted gas field to deliver gas by refusing to grant abandonment authority; neither can it require the producer to invest additional capital in what may be a useless effort to continue service from a depleted field.

The clearest discussion of the interrelationship between the "production and gathering" exclusion and the abandonment provisions of Section 7 appears in *F.P.C. v. Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 509-512. There the Court was discussing an argument made by the Commission, quite similar to their argument here, that its power to grant or deny abandonment under Section 7 gave it the power to refuse to permit Panhandle to assign gas leases which were connected to its system to a subsidiary company, because this would impair its ability to "maintain adequate service". The Court held that the powers under Section 7 extended only to "facilities subject to the jurisdiction of the Commission", and since leases were "production facilities" not jurisdictional facilities, the Commission had no power to prevent their abandonment, even by a pipeline company. The Court quoted at length from the Congressional debate on the Natural Gas Act in reaching its conclusion, 337 U.S. 498, 509-512.

The language of the Act having been designed, at least primarily, for the regulation of pipeline companies, speaks in terms of abandonment of "service".[29] Yet the obligations of pipeline and producer to "continue service" are quite different. A pipeline's "facilities" are clearly

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29. In *Permian Basin Area Rate Cases*, 390 U.S. 747, 756 (1968), the Court said: "The Commission has since labored with obvious difficulty to regulate a diverse and growing industry under the terms of an ill-suited statute."

subject to Commission jurisdiction; the majority of a producer's facilities, because they are production facilities, clearly are not. A pipeline can "continue service" indefinitely with its existing system, as long as the fields which supply the system will still produce gas, without making any additional capital investments. In fact, the Courts have held the Commission has no authority to require a pipeline to enlarge its facilities, see *Panhandle Eastern Pipe Line Co. v. F.P.C.*, 204 F.2d 675 (3rd Cir. 1953) and *Central West Utility Co. v. F.P.C.*, 247 F.2d 306 (3rd Cir. 1957). To say that a producer, whose facilities are not jurisdictional, must drill wells and install additional production equipment to maintain the deliverability of his wells, even if there were no doubt about the result, in response to a Commission order, expands the Commission's jurisdiction over producers beyond that which it has over pipelines, which it was first intended to regulate.

Contrary to the allegations of CEC and APGA, the Commission's regulations dealing with producer applications contain no provisions regarding reserve or deliverability estimates, at least prior to the Orders below, see 18 C.F.R. §§ 157.5-157.15. A pipeline is connected to many fields, and has many contracts which it uses to satisfy its customers (A. 446-447). The pipeline, *not the producer*, makes estimates of deliverability of its system, which vary from time to time, and depend on the purchase of gas from new fields to replace that produced from older depleting fields.[30] It is the inability

30. The Regulations quoted at pages 9-11 of APGA's Brief apply *only* to *pipeline* certificate applications, *not* to producer applications.

of the pipelines to purchase sufficient replacement gas that has led to the shortage (A. 451).

The basic fallacy in the CEC-APGA position is that reserves and deliverability figures are only estimates, not guarantees. If these estimates are wrong, the power of both the producer and the Commission to make the reservoirs produce as predicted is extremely limited.[31]

B. There Is No Policy Reason Why The Commission Must Have The Jurisdiction It Claims.

The original basis for Order No. 539 was the charge that producers were withholding gas from the pipeline purchasers in order to force the Commission to increase the price ceilings, and to persuade Congress to deregulate natural gas.[32] Similar charges by industry critics (including APGA) resulted in extensive investigations and audits by the Commission during the hearings of the *Southern Louisiana Area Rate Case*, and a finding by the Commission that the reserves figures placed in the record by the producers were "reasonably reliable" 46 F.P.C. 86, 116.[33] The Commission's conclusion was affirmed by the

31. Insisting that a producer cannot abandon service from a depleted reservoir until it was authorized to do so, is similar to Xerxes of Persia scourging the sea with whips because it would not obey his bidding.

32. CEC (p. 34), APGA (pp. 2-6), and Senior Citizens (pp. 10-12) still cling to these charges, despite the fact that they have been repeatedly shown to be without substance.

33. Similar investigations by the Federal Trade Commission (see *Federal Trade Commission v. Texaco*, 555 F.2d 862 (D.C. Cir. 1977), *cert. denied*, 97 S.Ct. 2939 and the Subcommittee on Oversight and Investigation of the House Interstate Commerce Committee resulted in no evidence of withholding, see Staff Memorandum from John Galloway, Special Assistant, dated May 4, 1976, Congressional Record, dated December 15, 1977, H. 13005-6, E. 7427.

Fifth Circuit in *Placid Oil Co. v. F.P.C.*, 483 F.2d 880, 894-896, which rejected APGA's reference to "supplies" of gas as a "misleading oversimplification" (483 F.2d 880, 894, n. 13). APGA and CEC continue to fail to draw vital distinctions between *undiscovered gas* (which may or may not be explored for, and if explored for, may or may not be found) and *discovered* gas, which must be produced expeditiously, because: (i) other lessees on adjoining leases in the same reservoir will deplete the reservoir from their wells; (ii) the lessor will insist on speedy and maximum production to receive his royalty and prevent waste and protect correlative rights. Significantly, the Commission now clearly concedes, that:

> "Order No. 539-B was based not on a finding that producers had been withholding deliveries of dedicated gas, but on the Commission's interpretation of the Act." (Br. p. 34)

The Court of Appeals found:

> "The impetus behind the FERC's actions was the charge made before various subcommittees of Congress that natural gas producers were avoiding the delivery obligations in their contracts of sale in order to realize greater profits. It was claimed that the producers were diverting natural gas from interstate to intrastate sales or withholding it in hope of future deregulation of the industry. No support for this charge appears in the record before us and the FERC stated in oral argument that its investigation has uncovered no evidence that the natural gas producers have been withholding supplies." (A. 3a)

Nevertheless, CEC and APGA continue to insist that the Commission must have authority to regulate the

"obligation" of the producer to continue "service" because otherwise the producer may "divert" (CEC p. 23) or "withhold" (APGA p. 6) gas in favor of unregulated categories, which they allege will be possible under the Natural Gas Policy Act of 1978 ("NGPA"). This allegation is absolutely contrary to the plain intent and clear language of the NGPA. Section 104 of the NGPA establishes the price for natural gas produced from old wells committed or dedicated to interstate commerce on November 8, 1978 as the just and reasonable rate established by the Commission. This gas is *never deregulated,* but remains subject to Commission jurisdiction for the life of the reserves (Section 601). While certain categories of "new wells" (drilled after February 19, 1977) are deregulated, *only* those new wells which are drilled to new reservoirs or to a different spacing or proration unit than existing wells are entitled to any different price treatment. Thus, the alleged "incentive" for producers to withhold gas from existing wells hoping for better price treatment no longer exists, if it ever did.[34] Congress has determined in the NGPA to eliminate

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34. APGA's statement (Br. p. 6) that "producers can refuse to deliver gas from such committed old wells and shift to deliver gas from new wells at higher prices" shows a lack of understanding of the mechanics of gas production and the NGPA. In order to receive the higher prices authorized by the NGPA, new wells must produce from reservoirs or spacing units (which are defined as the area which a well will drain) which could not be produced by existing wells. Thus, the two type wells produce from two distinct and separate sources, and it is a physical impossibility to "shift" production from one to the other. The exclusion in Section 102(c)(1)(c)(ii) and (iii) providing that "behind-the-pipe" gas and "withheld" gas will not qualify for the new gas ceiling rate, but will be held to the existing rates for old wells (Comm. Br. p. 37, n. 28) and designed specifically to *prevent* producers from receiving the new higher prices for previously discovered gas.

the Commission's jurisdiction under the Natural Gas Act, as to future wells.

C. The Asserted Jurisdiction Of The Commission Will Conflict With Existing Regulation of Production By State Agencies.

The cases cited in Section A, *supra,* show clearly that Congress excluded production and gathering from the Commission's jurisdiction because these activities were regulated by State Conservation Agencies. Yet CEC contends that the regulatory system set up by Congress does not adequately protect the consumer, because the State agency is primarily concerned with prevention of waste, and thereby sets maximum, not minimum, rates of production (Br. p. 41). Aside from the real issue whether the consumers' interests are better served by rapid depletion of existing reservoirs as opposed to producing them over a longer period,[35] the probability of conflict between State and Commission regulation is apparent. What if the State agency fixed the maximum rate of production from a field at 100 MMcf per day and the Commission fixed the minimum rate at 200 MMcf per day? How is the producer to proceed? The application of the standard cannot be blindly deferred for future consideration (Br. pp. 48, 57). Consideration of the many conflicts which would arise between the two jurisdictions attempting to regulate the same function[36] was a basic

35. At Appendix 457-58, counsel for the pipelines argued to the Commission that rapid depletion of fields would channel gas into undesirable uses and promote waste.

36. Examples of possible conflict are many. Suppose the Commission required the producers to drill an additional well at a point which violated the State's spacing orders. Would the Commission's order overrule the State law that a well cannot be drilled without a permit? State proration orders may restrict production below limits demanded by the Commission. The Commission could require compression to be installed in a field where the State agency finds that such actions will destroy wells and create waste of reserves in the ground, etc., etc., etc.,

reason for the decision of Congress to leave regulation of this function to the States.[37]

D. The Use Of The "Ordinary Prudent Operator" Rule As A Standard For Regulation.

In addition to the question whether the Commission has jurisdiction over production, in the guise of preventing a decline in "service",[38] CEC raises the issue whether, assuming the Commission does have jurisdiction, the proper standard of regulation should be the "ordinary prudent operator" standard adopted by Order No. 539-B or the "certificated minimum daily quantity" standard imposed by Order Nos. 539 and 539-A. CEC objects to the prudent operator standard on the grounds of "vagueness" and "unpredictability" (Br. pp. 43-49). What the Commission finally appreciated, though CEC still does

37. Under the *Outer Continental Shelf Lands Act* of August 7, 1953, the Bureau of Land Management of the Department of Interior has established regulations which control development of OCS leases, and require the lessee to "exercise reasonable diligence" in development and production operations, see 47 C.F.R. §§ 3307.3-2, 3307.3-4.

38. *Pennsylvania Water and Power Co. v. F.P.C.*, 343 U.S. 414 (1952) relied on by CEC (Br. pp. 35, 36) is clearly inapposite to gas producers. An electric utility may create new electric power in many ways, using gas, oil, coal or uranium as fuel. It is guaranteed the opportunity to recover its individual costs, whatever they may be, plus a return, as well as a guaranteed market. A gas producer's ability to "serve" on the other hand, is limited by the ability of his gas reservoirs to produce, and he has no right to increase his price to recover the cost of unsuccessful operations.

not, was the fact that every gas reservoir declines in deliverability over its life (see diagram at Appendix A and discussion, *supra*). Therefore, if a "predictable" standard were established, it would be certain to be violated at some point in the life of the field. This problem is not avoided, as CEC suggests, by fixing a "range" within which a decline in deliveries would be permitted. Rates of decline in reservoirs vary widely, frequently outside of predictable "ranges." Therefore, the insertion of specific numbers in a standard, instead of a standard based on reasonableness, does not reduce litigation or make the Commission's role any simpler or more precise.

Even though the standard adopted by the Commission is the same as that utilized by State Conservation Agencies and State Courts in enforcing the implied covenant which the lessee/producer has to his lessor, the application of that standard to a specific fact situation may be very different.[39] But even more importantly, the *remedy* imposed by the Commission would be different than that imposed by the State Court in a lawsuit by the lessor. The relief granted in a suit for breach of implied covenant is cancellation of the lease.[40] The remedy presumably imposed by the Commission would be a requirement that the producer drill additional wells or take some other action designed to maintain or increase the deliverability of the reservoir. If the chances of success of such an operation were good, Commission action would be unnecessary, as the normal economic interest of the producer would have induced him to drill the well in any event. It is in situations where the

39. See n. 37, supra.

40. 5 H. Williams and C. Meyers, *Oil and Gas Law*, § 806.

chance of success is small, and risk of failure high, that the lessee will refuse to invest his capital in what he believes to be a losing venture. In such a case, the inclination of the Commission will be to require the well, in the interest of "maintaining service" or "expanding supplies". If the producer was correct, and the well is unsuccessful, he has no opportunity to recover his lost capital in the rate for the gas he sells, as those rates are fixed by Commission ceilings and the NGPA.

E. The Commission's Asserted Jurisdiction Cannot Apply To Certificates Issued Prior To Order No. 539.

The Commission claims the power, not only to impose certificate conditions in producer certificates issued after the date of the Opinions below stating the producers' "delivery obligations", under its conditioning power in Section 7(e) of the Act,[41] but *in addition*, claims the authority to impose a similar requirement in *existing* certificates (Br. p. 36). The Commission claims this power to be "implicit" from the Act itself, *even though the certificate gave no hint* that the Commission claimed such awesome power (Order No. 539-B, A. 21a).

Assuming *arguendo*, that the Commission is correct in its position that Section 7 of the Act has destroyed the "production and gathering" exclusion under Section 1(b), this does not mean that the Commission can impose such far-reaching jurisdiction retroactively. This Court

41. This Court said in *Sunray, supra*: "... once the want of power to do this directly were established, the existence of power to achieve the same end through the conditioning power [under Section 7(e)] might well be doubted . . ." (364 U.S. at 152). See also *Central West Utility Co. v. F.P.C.*, 247 F.2d 306, 310-311.

has clearly defined the right of the producer to exercise a conscious decision whether to accept a certificate in which the Commission has imposed conditions on the service which are different than those proposed in the application, *Atlantic Refining Company v. Public Service Commission of New York, (CATCO)*, 360 U.S. 378, 387-388; *Sunray Mid-Continent Oil Co. v. F.P.C.*, 364 U.S. 137, 141. In order to make this decision, the producer is entitled to know what those conditions are. The Commission cannot, consistent with *CATCO* and *Sunray*, impose conditions retroactively, many years after the certificates have been issued, accepted, and service commenced under them, on the grounds that such conditions were somehow "implicit" from the beginning. The very case on which the Commission bases its argument, *Sunray, supra,* would have permitted the producer to decline the unlimited term certificate offered by the Commission, had he chosen to do so. A major change in policy, even where authorized by statute, cannot be given retroactive effect, *Farmers Union Central Exchange, et al. v. F.E.R.C.*, ___F.2d___, Case No. 76-2138, C.A.D.C., decided June 27, 1978.

F. The "End Result"[42] Of The Enforcement Of Either Standard By the Commission Is Litigation, Chaos, And Declining Gas Supplies.

The inevitable result of CEC's proposed standard, instead of a "few time-consuming and complex proceedings" (Br. p. 47), is a *multitude* of time-consuming and

42. This is the ultimate test of the Commission's actions, see *Permian Basin Area Rate Cases*, 390 U.S. 747, 769 (1968); *Mobil Oil Corp. v. F.P.C.*, 417 U.S. 283, 307 (1974).

complex proceedings, as the Commission seeks to "second-guess" the decisions of the producer and State Agency on the best way to develop and produce the reservoir.

Thus, the "end result" of the imposition of Commission regulation over producer, whether under the "prudent operator" or "minimum DCQ" standard, will be exactly the opposite of that assumed by CEC, APGA, and Senior Citizens. Instead of forcing producers to deliver some supplies which are being withheld as these parties erroneously assume, more producers will spend their resources defending their production decisions on existing fields, rather than devoting their efforts to discovering new reserves. The ultimate loser will be the very consumers whose interests these parties purport to represent.

V. CONCLUSION

The Court of Appeals has correctly construed Section 1(b) of the Act and the earlier cases of this Court as excluding production activities from the jurisdictional reach of the Commission. This is true whether the jurisdiction is sought to be imposed directly, or indirectly in the guise of regulating "service" by the producer. Its decision should be affirmed.

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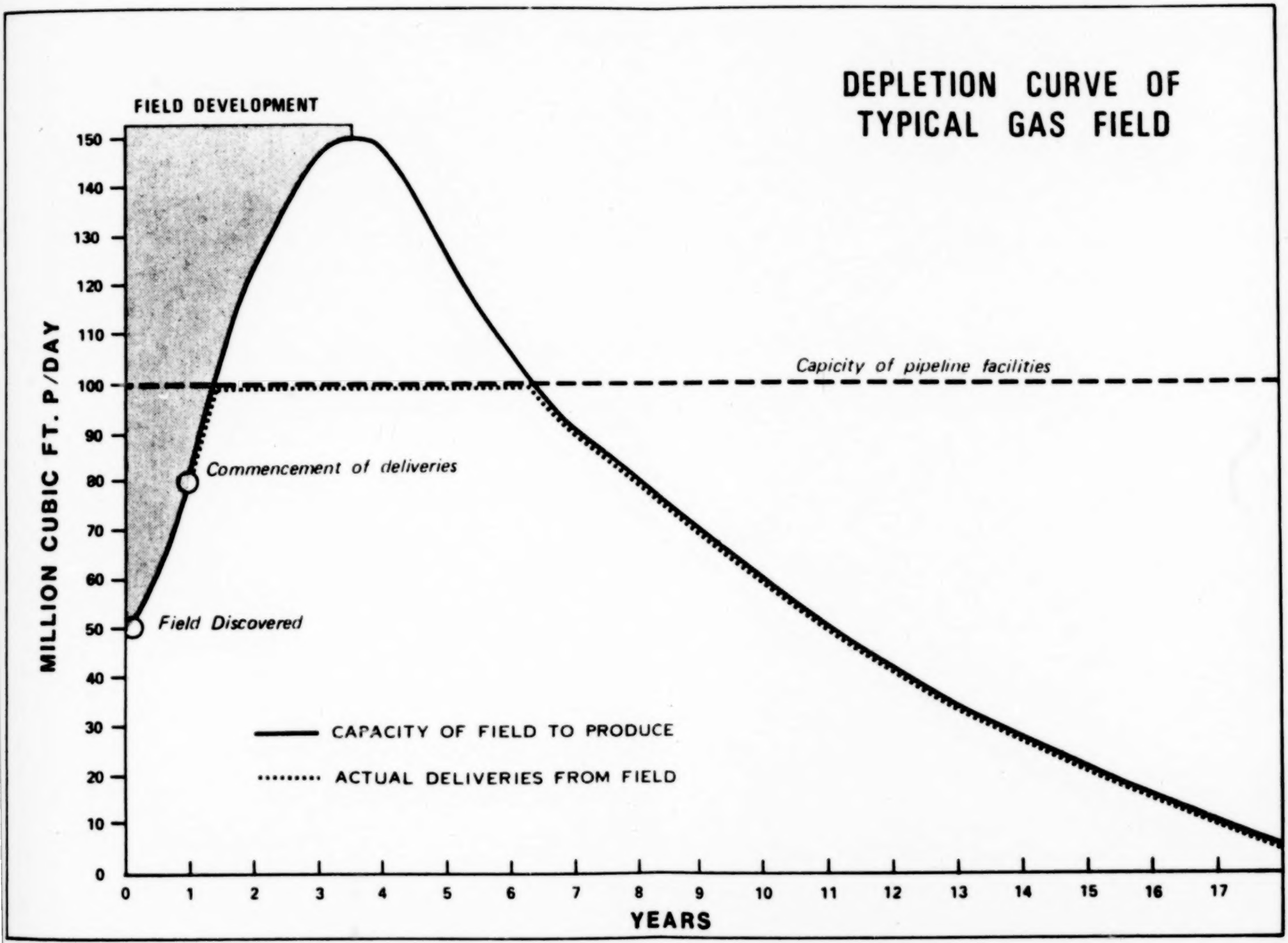
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DEPLETION CURVE OF
TYPICAL GAS FIELD
FIELD DEVELOPMENT
MILLION CUBIC FT. P/DAY
150
140
130
120
110
100
90
80
70
60
50
40
30
20
10
0
Capicity of pipeline facilities
Commencement of deliveries
Field Discovered
CAPACITY OF FIELD TO PRODUCE
ACTUAL DELIVERIES FROM FIELD
0
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
YEARS

APPENDIX B

Table 1
UNITED STATES GAS SUPPLY-DEMAND BALANCE
Actual 1966-1970; Projected 1971-1990
(All Volumes in Trillions of Cubic Feet @ 14.73 Psia and 60° Fahrenheit)

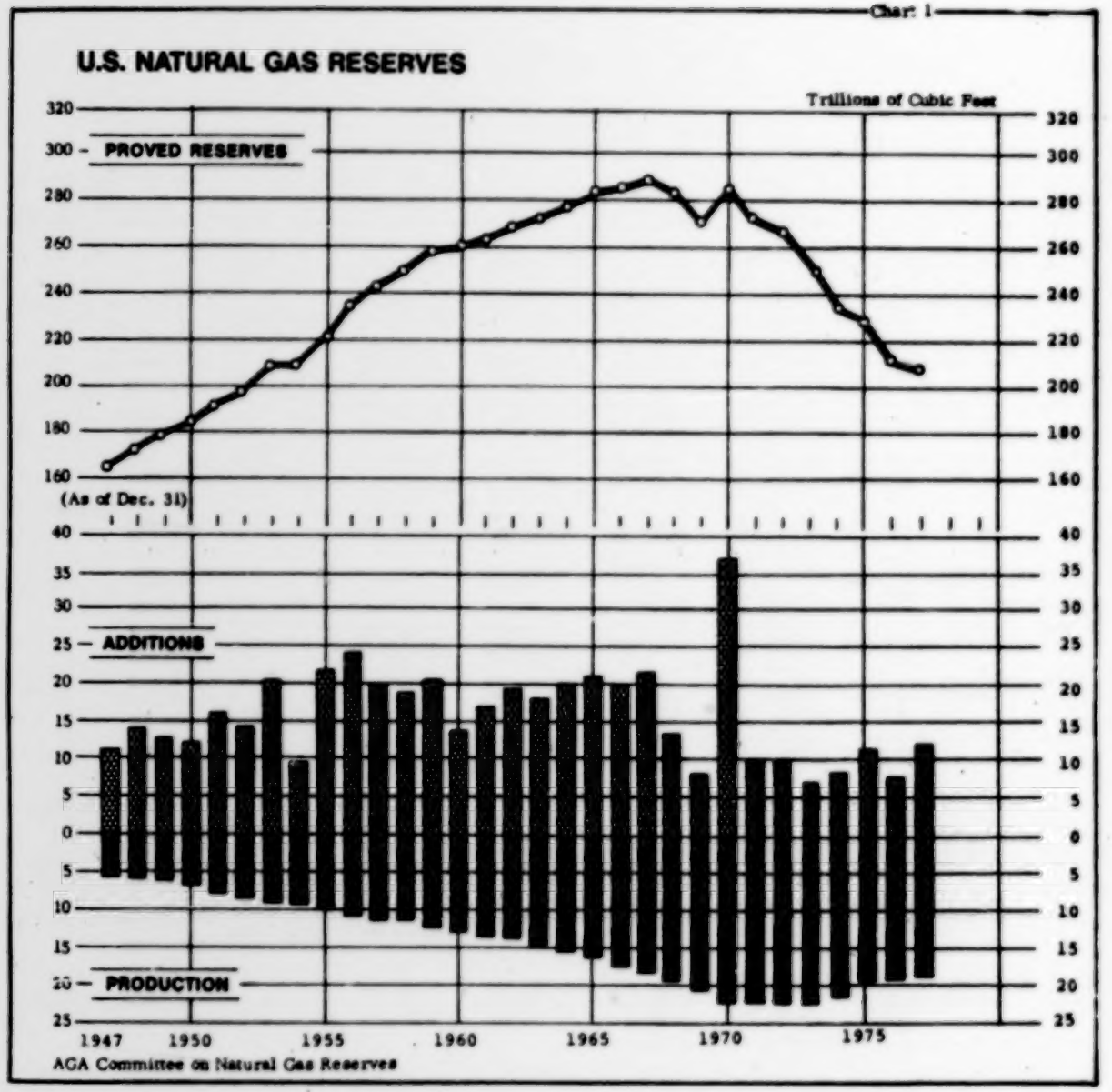
Year	Annual Demand 1/	Net Pipeline Imports	LNG Imports	Gas From Coal	Gas From Alaska	Gas From Liquid Hydrocarbons	Domestic Production	Annual Consumption	Unsatisfied Demand	Reserve Additions	Year-end Reserves	R/P Ratio
1966	17.9	0.4	-	-	-	-	17.5	17.9	0.0	19.2	286.4	16.4
1967	18.8	0.5	-	-	-	-	18.4	18.8	0.0	21.1	289.3	15.8
1968	19.9	0.6	*	-	-	-	19.3	19.9	0.0	12.0	282.1	14.6
1969	21.3	0.7	*	-	-	-	20.6	21.3	0.0	8.3	269.9	13.1
1970	22.6	0.8	*	-	-	-	21.8	22.6	0.0	11.1	259.6	11.9
1971	24.6	0.9	*	-	-	-	22.8	23.7	0.9	12.0	248.8	10.9
1972	26.1	1.0	*	-	-	oo	23.8	24.8	1.3	13.0	238.0	10.0
1973	27.7	1.1	*	-	-	oo	24.7	25.8	1.9	14.0	227.3	9.2
1974	28.8	1.1	*	-	-	oo	24.8	25.9	2.9	15.0	217.4	8.8
1975	29.8	1.2	0.3	-	-	oo	24.7	26.2	3.6	16.0	208.7	8.4
1980	34.3	1.6	2.0	0.3	0.7	oo	20.4	25.0	9.3	17.0	186.1	9.1
1985	39.8	1.9	3.0	1.4	1.3	oo	18.5	26.1	13.7	17.0	173.4	9.5
1990	46.4	1.9	4.0	3.3	2.3	oo	17.8	29.3	17.1	17.0	170.4	9.6
1971-1990 Totals	707.6	31.1	36.0	17.3	20.6	oo	414.2	521.2	186.4	323.0	-	-

* Very small volumes
oo Insufficient data for quantitative projection; unsatisfied demand will be reduced by the amount of SNG actually produced.
1/ Contiguous 48 states.

Source: Placid Oil Company v. F.P.C., 483 F.2d 880, 895.

APPENDIX C

Chart 1



Source: Reserves of Crude Oil, Natural Gas Liquids, and Natural Gas in the United States and Canada as of December 31, 1977, published by the American Gas Association.

APPENDIX D

Table - 5 INTERSTATE PIPELINE COMPANIES
CHANGES IN GAS RESERVES 1/

(ALL VOLUMES .N MILLIONS OF CUBIC FEET (MMCF) AT 14.73 PSIA @ 60 F)

YEAR	ITEM 2/	GAS RESERVES 1ST OF YEAR	REVISIONS 3/ & ADDITIONS GAIN OR LOSS	ANNUAL PRODUCTION	GAS RESERVES YEAR-END	4/ GC/P RATIO	R/P RATIO	ANNUAL 5/ NEW SUPPLY RESERVES	ANNUAL 5/ ADDITIONS PRODUCTION
1963	RESERVES 12-31-63			9,350,628	188,540,057				
1964	RESERVES 12-31-63	188,540,057	5,853,473	9,957,148	184,436,382				
	NEW SUPPLY 1964		4,786,469	57,427	4,729,042			4,786,178	57,427
	TOTAL	188,540,057	10,639,942	10,014,575	189,165,424	1.06	18.9		
1965	RESERVES 12-31-63	184,436,382	2,067,648	10,085,473	176,418,557				
	NEW SUPPLY 1964-1965	4,729,042	11,214,491	285,302	15,658,231			10,193,245	70,881
	TOTAL	189,165,424	13,282,139	10,370,775	192,076,788	1.28	18.5		
1966	RESERVES 12-31-63	176,418,557	1,373,299	10,448,488	167,343,368				
	NEW SUPPLY 1964-1966	15,658,231	12,816,801	688,078	27,786,954			10,130,962	76,977
	TOTAL	192,076,788	14,190,100	11,136,566	195,130,322	1.27	17.5		
1967	RESERVES 12-31-63	167,343,368	4,347,268	10,630,630	161,060,006				
	NEW SUPPLY 1964-1967	27,786,954	10,403,584	1,189,381	37,001,157			9,032,337	72,259
	TOTAL	195,130,322	14,750,852	11,820,011	198,061,163	1.25	16.8		
1968	RESERVES 12-31-63	161,060,006	1,023,867	10,706,018	151,377,855				
	NEW SUPPLY 1964-1968	37,001,157	8,429,100	1,846,079	43,584,178			6,273,690	55,709
	TOTAL	198,061,163	9,452,967	12,552,097	194,962,033	.75	15.5		
1969	RESERVES 12-31-63	151,377,855	143,023-	10,840,598	140,394,234				
	NEW SUPPLY 1964-1969	43,584,178	6,223,648	2,592,790	47,215,036			6,231,721	56,197
	TOTAL	194,962,033	6,080,625	13,433,388	187,609,270	.45	14.0		
1970	RESERVES 12-31-63	140,394,234	2,341,557-	10,728,210	127,324,467				
	NEW SUPPLY 1964-1970	47,215,036	2,379,815	3,363,573	46,231,278			9,458,783	71,652
	TOTAL	187,609,270	38,258	14,091,783	173,555,745		12.3		
1971	RESERVES 12-31-63	127,324,467	179,918	10,446,522	117,057,863				
	NEW SUPPLY 1964-1971	46,231,278	1,810,815	3,758,568	44,283,525			2,191,811	43,734
	TOTAL	173,555,745	1,990,733	14,205,090	161,341,388	.14	11.4		
1972	RESERVES 12-31-63	117,057,863	3,247,027-	10,236,911	103,573,925				
	NEW SUPPLY 1964-1972	44,283,525	3,018,223	3,970,026	43,331,722			5,001,475	111,256
	TOTAL	161,341,388	228,804-	14,206,937	146,905,647	.02-	10.3		
1973	RESERVES 12-31-63	103,573,925	711,183-	9,408,800	93,453,942				
	NEW SUPPLY 1964-1973	43,331,722	1,803,192	4,271,583	40,863,331			1,740,271	74,173
	TOTAL	146,905,647	1,092,009	13,680,383	134,317,273	.08	9.8		
1974	RESERVES 12-31-63	93,453,942	1,216,464-	8,608,922	83,628,556				
	NEW SUPPLY 1964-1974	40,863,331	406,843	4,356,128	36,914,046			2,399,584	81,653
	TOTAL	134,317,273	809,621-	12,965,050	120,542,602	.06-	9.3		
1975	RESERVES 12-31-63	83,628,556	1,294,284-	7,574,784	74,759,488				
	NEW SUPPLY 1964-1975	36,914,046	440,114-	4,416,964	32,056,968			1,478,833	106,971
	TOTAL	120,542,602	1,734,398-	11,991,748	106,816,456	.14-	8.9		
1964-1975	RESERVES @ 12-31-63	188,540,057	5,891,935	119,672,504	74,759,488				
	NEW SUPPLY 1964-1975		62,852,867	30,795,899	32,056,968			62,938,870	878,869
	TOTAL	188,540,057	68,744,802	150,468,403	106,816,456	.46			

1/ SOURCE: FORM 15 REPORTS ADJUSTED TO ELIMINATE DUPLICATIONS.

2/ ITEM "RESERVES @ 12-31-63" REPRESENTS TOTAL RESERVES AND PRODUCTION FOR ALL GAS SUPPLY SOURCES REPORTED AS OF YEAR-END 1963 AND THE ANNUAL CHANGES IN RESERVES AND PRODUCTION FOR THESE SAME GAS SUPPLY SOURCES.
ITEM "NEW SUPPLY..." SHOWS THE YEAR-END RESERVES, ANNUAL PRODUCTION AND CHANGES IN RESERVES FOR ALL NEW SOURCES OF SUPPLY REPORTED IN FORM 15 SINCE 1963.

3/ THE ARITHMETICAL DIFFERENCES BETWEEN THE CURRENT YEAR-END RESERVES PLUS PRODUCTION AND THE PREVIOUS YEAR-END RESERVES.

4/ RATIO OF "REVISIONS AND ADDITIONS" TO "ANNUAL PRODUCTION".

5/ NEW SUPPLY (FIELD OR PLANT) REPORTED FOR THE FIRST TIME IN THE YEAR SHOWN IS COMPILED ON A COMPANY BY COMPANY BASIS AND DOES NOT INCLUDE NEW RESERVOIRS OR NEW DEDICATION IN FIELDS OR PLANTS REPORTED IN THE PREVIOUS YEAR. VOLUMES REPORTED AS RESERVES REPRESENT YEAR-END RESERVES PLUS THE PRODUCTION FOR THAT YEAR.

Source: The Gas Supplies of Interstate Natural Gas Pipeline Companies 1975, published by the Federal Power Commission, Bureau of Natural Gas, January 1977.